

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling Concerning)	CG Docket No. 03-84
The Bundling of Local Telephone Service)	
with Long Distance Service)	
)	

**REPLY COMMENTS OF
PAC-WEST TELECOMM, INC. AND US LEC CORP.**

Pac-West Telecomm, Inc. ("Pac-West"), and US LEC Corp. ("US LEC") (together, the "Commenters"), through undersigned counsel and in accordance with the Federal Communications Commission's ("Commission") public notice, hereby submit their Reply Comments in the above-captioned proceeding. All but one of the parties also filing comments in this proceeding state that there is no basis for Petitioner's request that local exchange carriers ("LECs") be required to offer a "local only" line to subscribers and, like Commenters, urge the Commission to deny the Petition. Based upon the record, and for all the reasons stated in Commenters' initial comments, Petitioner has not demonstrated any basis for requiring LECs to provide a "local only" service option.

I. REPLY COMMENTS

A. Commenters Support Those Comments That Urge the Commission to Reject the Petition

As noted by several parties and in Commenter's initial comments, LECs are permitted to assess customer non-traffic sensitive line charges on all lines to recover the cost of the interstate portion of each line.¹ Thus, Petitioner's real issue is not the availability of local only service, but

¹ Comments of AT&T Corp., at 11-13; Comments of Verizon Florida, at pp. 3-4, 7-8.

the requirement that Petitioner pay Commission-approved line charges on a telephone line that Petitioner claims will be used only for local calls.²

When viewed in this light, Petitioner's complaint has no merit as charges about which Petitioner complains were established by the Commission to implement the universal service mandates of the Telecommunications Act of 1996. As the Commission noted in implementing these charges, "[m]uch of the telephone plant that is used to provide local telephone service (such as the local loop, the line that connects a subscriber's telephone to the telephone company's switches) is also needed to originate and terminate long-distance calls."³ Therefore, it is appropriate that LECs be permitted to recover the costs of providing interstate access over the local loop through non-traffic sensitive access charges, including the Subscriber Line Charge ("SLC"), Common Carrier Line Charge ("CCL") and Primary Interexchange Carrier Charge ("PICC").⁴

Moreover, the FCC's access charge regime has been affirmed by the United States Court of Appeals for the Eighth Circuit in *Southwestern Bell Tel. Co. v. FCC*.⁵ In upholding the Commission's rate methodology, the Court addressed the same issue Petitioner raises in this proceeding and stated:

a subscriber who does not use the subscriber line to place or receive [interstate] calls imposes the same NTS costs as a subscriber who does not use the line. . . . Thus, simply by requesting telephone service, the subscriber "causes" local loop costs, whether it uses the service for intrastate or interstate calls.⁶

The Court then concluded that "it is therefore appropriate and rational for the Commission to

² Comments of the Promoting Active Competition Everywhere Coalition, at pp. 4-5; Comments of Verizon Florida, at pp. 3-4, 8-9.

³ *Access Charge Reform First Report and Order*, at ¶ 17.

⁴ *Access Reform First Report and Order*, at ¶¶ 36-41.

⁵ 153 F.3d 523 (8th Cir. 1998).

impose those costs on the end user.”⁷ Accordingly, Petitioner’s claims have already been rejected by the Commission and the Court of Appeals. Petitioner has not offered any new basis to modify those determinations.

B. The Ratepayer Advocate Mischaracterizes the Issues Raised by the Petition

The only comments that appear to support Petitioner are those filed by the New Jersey Division of Ratepayer Advocate (“Ratepayer Advocate”); however, the Ratepayer Advocate misses the point. The Ratepayer Advocate claims that any practice that requires a customer to select a long distance carrier as a condition of local service violates the Communications Act, and that customers should be permitted to select no long distance carrier. That is not the issue raised by Petitioner, nor is it a basis upon which to grant Petitioner’s request.

Petitioner has not claimed that she was prohibited from not selecting a long distance carrier. Indeed, as several other parties submitting comments noted a “no PIC” selection is always an available option for a customer who wishes to limit or block access to long distance service on a particular line.⁸ Rather, Petitioner’s claim is that she should be permitted to obtain a “local only” telephone line and not be required to pay *any* access charges for that line, regardless of whether or not the line remains connected to the interexchange network. The Ratepayer Advocate failed to address this aspect of Petitioner’s claim.

Contrary to the Ratepayer’s Advocate’s interpretation of the Petition, the Petitioner, as well as any other customer, has the option of not selecting a long distance carrier when she initially subscribed for service. In addition, as noted in Commenters’ initial comments, a

⁶ 153 F.3d at 558 (quoting *National Ass’n of Regulatory Util. Comm’rs*, 737 F.2d 1095, 1108 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985)).

⁷ *Id.*

⁸ Comments of MCI WorldCom Network Services, Inc., at pp. 6-7; Comments of the Promoting Active Competition Everywhere Coalition at p. 4; Comments of Sprint Corporation, at p. 6.

subscriber can always request toll-blocking on any telephone line in order to prohibit the origination of long distance or toll calls on that line. Based upon Petitioner's filings, Petitioner did not elect either of these options. Nonetheless, even if a customer selects "no PIC" and requests toll-blocking service on its telephone line, the customer can still utilize the line to originate toll-free calls or collect calls, receive interstate or interexchange calls, and place dial-around (1010XXX) calls in order to access the interexchange network. Thus, even if a customer claims to want a telephone line for local only service, the LEC providing the underlying local exchange service must maintain the appropriate interconnections and have in place appropriate switching, signaling, and other functionality to enable the proper routing of interexchange toll calls. Consequently, even those customers that do not intend to utilize interexchange services place a burden on the LEC's network and cause the LEC to incur costs to maintain appropriate interconnections and other functionality in the event a customer originates or receives an interexchange call. It is for precisely this reason that the Commission permits LEC to assess subscriber line and other non-traffic sensitive access charges to recover the costs of providing this accessibility.

For these reasons, the Ratepayer Advocate's suggestion that a customer be permitted to select a no-PIC option does not resolve the issue raised by Petitioner or address the underlying issues related to the structure of LECs' networks. Customers are already permitted to do what the Ratepayer Advocate suggests, and no party has claimed that LECs are prohibiting customers from not selecting a long distance carrier. The Commission should reject the issue raised by the Ratepayer Advocate as providing any basis for granting the Petition.

C. CLECs Will Offer Local-Only Service if There is a Market for Such Service

As noted in Commenter's initial comments, LECs have not experienced a significant customer demand for a local-only service option. No other party filing comments noted a

significant demand for local-only service. In addition, as the Commission has recognized “consumers benefit from bundling because it eliminates the need for carriers to separately provision, market, and bill services, and therefore reduces the transaction costs carriers pass on to consumers.”⁹ Consequently, there is currently no incentive for LECs to stand-alone local-only service.


Nonetheless, should a market for local-only service develop or should customers begin switching to LECs that offer this option, LECs will begin developing local-only service options to compete with other carriers and meet this new demand. Given that a competitive marketplace will foster the development of new, innovative service offerings, including potentially a stand-alone local-only service option, as demand and the market dictates, there is no reason for the Commission to require carriers to provide local-only service at this time; particularly in light of the Commission’s own recognition that LECs’ current bundled service offerings typically reduce the transaction costs passed on to consumer and thus lower customers’ rates.

⁹ In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Review – Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange Access and Local Exchange Markets, *Report and Order*, CC Docket Nos. 96-61 and 98-183, FCC 01-98, at ¶ 15 (rel. March 30, 2001).

III. CONCLUSION

For the foregoing reasons, Commenters continue to urge the Commission to deny Petitioner's request and issue a Declaratory Ruling that LECs are not required to provide local-only service and are permitted to offer bundled packages or stand-alone services as the markets and consumer demands warrant.

Respectfully submitted,



John Sumpter
Vice President, Regulatory
PacWest Telecom, Inc.
4210 Coronado Avenue
Stockton, California 95204

Wanda G. Montano
Vice President, Regulatory & Industry Affairs
US LEC Corp.
6801 Morrison Boulevard
Charlotte, North Carolina 28211

Patrick J. Donovan
Michael P. Donahue
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Telephone)
(202) 424-7643 (Facsimile)

Counsel for PacWest Telecom, Inc. and
US LEC Corp.

Dated: June 20, 2003